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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOANN MOUTON,

Plaintiff,

No. C 13-4121 EDL (PR)

v.

VILLAGRAN, et. al.,

Defendants.

**ORDER DISMISSING WITH
LEAVE TO AMEND**

Plaintiff, a state prisoner currently incarcerated at Central California Women's Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's complaint was dismissed with leave to amend and she has filed an amended complaint.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff states that she fell down the stairs while exiting a bus and later received
18 inadequate medical care.

19 The treatment a prisoner receives in prison and the conditions under which she is
20 confined are subject to scrutiny under the Eighth Amendment. See *Helling v. McKinney*,
21 509 U.S. 25, 31 (1993). The Amendment also imposes duties on these officials, who must
22 provide all prisoners with the basic necessities of life such as food, clothing, shelter,
23 sanitation, medical care and personal safety. See *Farmer v. Brennan*, 511 U.S. 825, 832
24 (1994).

25 A prison official violates the Eighth Amendment when two requirements are met: (1)
26 the deprivation alleged must be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834
27 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a
28

1 sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297). Neither negligence
2 nor gross negligence will constitute deliberate indifference. See *Farmer*, 511 U.S. at
3 835-36 & n.4. A prison official cannot be held liable under the Eighth Amendment for
4 denying an inmate humane conditions of confinement unless the standard for criminal
5 recklessness is met, i.e., the official knows of and disregards an excessive risk to inmate
6 health or safety. See *id.* at 837. The official must both be aware of facts from which the
7 inference could be drawn that a substantial risk of serious harm exists, and he must also
8 draw the inference. See *id.*

9 Deliberate indifference to serious medical needs violates the Eighth Amendment's
10 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104
11 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
12 *grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).
13 A determination of "deliberate indifference" involves an examination of two elements: the
14 seriousness of the prisoner's medical need and the nature of the defendant's response to
15 that need. *Id.* at 1059.¹

16 Plaintiff states she suffers from a muscular disorder and fell down the stairs while
17 exiting a bus injuring herself. She states that defendant Villagram should have been
18 present near the stairs, but was somewhere else smoking. Plaintiff states that Villagram
19 failed to protect her from this accident. Plaintiff also alleges that nurse Zamora who treated
20 her did not provide a thorough check up and should have ordered an X-ray. As a result she
21 has ongoing medical problems that are only briefly described.

22 _____
23 ¹ It is not clear if plaintiff was a pre-trial detainee at the time of this incident. Regardless,
24 even though pretrial detainees' claims arise under the Due Process Clause, the Eighth
25 Amendment serves as a benchmark for evaluating those claims. See *Carnell v. Grimm*, 74
26 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of care
27 for pretrial detainees). The Ninth Circuit has determined that the appropriate standard for
28 evaluating constitutional claims brought by pretrial detainees is the same one used to evaluate
convicted prisoners' claims under the Eighth Amendment. "The requirement of conduct that
amounts to 'deliberate indifference' provides an appropriate balance of the pretrial detainees'
right to not be punished with the deference given to prison officials to manage the prisons."
Redman v. County of San Diego, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc) (citation
omitted).

As currently pled, these allegations fail to state a constitutional violation. It is not clear how Villagram was deliberately indifferent and how he could have prevented this accident. Plaintiff provides no details regarding her muscular disorder and if Villagram was aware of it that should have prompted him to take certain actions. Nor do plaintiff's brief allegations show how Zamora was deliberately indifferent to her serious medical needs and what an X-ray would have revealed.

7 As noted above, neither negligence nor gross negligence will constitute deliberate
8 indifference and plaintiff's allegations are insufficient to state a claim under *Iqbal*. "A claim
9 has facial plausibility when the plaintiff pleads factual content that allows the court to draw
10 the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556
11 U.S., at 678. The complaint will be dismissed with leave to amend for plaintiff to provide
12 more information with respect to the standards set forth above.

CONCLUSION

14 1. The amended complaint is **DISMISSED** with leave to amend in accordance with
15 the standards set forth above. The amended complaint must be filed within **twenty-eight**
16 **(28) days** of the date this order is filed and must include the caption and civil case number
17 used in this order and the words AMENDED COMPLAINT on the first page. Because an
18 amended complaint completely replaces the original complaint, plaintiff must include in it all
19 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
20 1992). She may not incorporate material from the original complaint by reference. Failure
21 to amend within the designated time will result in the dismissal of this action.

22 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
23 court informed of any change of address by filing a separate paper with the clerk headed
24 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
25 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
26 Federal Rule of Civil Procedure 41(b).

United States District Court
For the Northern District of California

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IT IS SO ORDERED.

Dated: February 10, 2014.

Elijah R. D. Laporte

ELIZABETH D. LAPORTE
United States Chief Magistrate Judge

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